Supreme Court, U.S.
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92-343

NO._____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM; 1992

JAMES BURKE SANTOS, Petitioner

V.

MEGUMI LINDSTROM AND UNIFICATION CHURCH OF COLORADO, Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE COLORADO SUPREME COURT

PETITION FOR A WRIT OF CERTIORARI

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I. QUESTIONS PRESENTED FOR REVIEW

A. The primary issues presented for review is as follows:

Whether the statute of limitations for actions under the Colorado Auto Accident Reparations Act begins running on the date of the underlying auto accident or on the date the Plaintiff meets the threshold requirements for commencing a tort action under the Act.

B. Whether the $2,500.00 medical expense threshold requirement of Section 10-4-714(1) (e), C.R.S. (1987 Replacement Volume 4A), is properly an "objective" threshold requiring a finding that $2,500.00 or medical expenses have, in fact, been incurred or whether it was intended to be a "verbal" type threshold which would require a determination of the exact date the Plaintiff knew or should have known that

he or she had a prospective "need" for at least $2,500.00 medical services.

C. Whether the Colorado Personal Injury Practice has any relationship with the Statute of Limitations beginning to run on the date the Plaintiff meets the threshold requirements for commencing a tort action.

II. REVIEW OF JUDGMENTS SOUGHT

A. State Supreme Court.

B. State Appeals Court by Judge Silverstein, Pierce and Marquez, J. J., concur.

C. District Court City and County of Denver.

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D. State v. Young, 665 P.2d 108, 110 (Colo. 1983)

E. Mastro v. Brodie, 682 P.2d 1162, 1167-68 (Colo. 1984)

F. Flatiron Paving Co. v Great Southwest Fire Insurance Co., 19 Colo. Law. 2530 (Colo. App. October 25, 1990)

G. Dove v. Delgado, 808 P.2d 1270 (Colo. 1991); and

H. Pistora v, Renden, 765 P.2d 1099 (Colo. App. 1988.

V. REFERENCE TO THE OFFICIAL AND UNOFFICIAL OPINIONS

This matter was decided by the State Supreme Court Case No. 91SC716 giving certiorari to the State Appeals Court Case No. 90CA1563. Denver District Court Case No. 90CV5699 State of Colorado.

VI. GROUNDS ON WHICH UNITED STATES SUPREME COURT IS INVOKED

The State Supreme Court's decision denying Plaintiff's Petition for Rehearing was entered on April 13, 1992.

VII. STATUTORY JURISDICTION

Where the statutes are drawn in question on the grounds of it being contradictory and discriminating against Petitioner.

VIII. CONSTITUTIONAL PROVISIONS

Statutes:

Section 10-4-714(1)(e) C.R.S (1987 Replacement Volume 4A)

Section 13-80-101(1)(j) C.R.S (1987 Replacement Volume 6A)

Section 13-80108(1) C.R.S. (1987 Replacement Volume 6A)

Section 13-80-105(1) 6 C.R.S (1983 Supp.)

(Copies attached in Appendix)

IX. STATEMENT OF THE CASE

This is an action to recover for bodily injuries and losses resulting from an automobile accident on July 6, 1986. Following the automobile accident, the Petitioner sought and received medical treatment where a myleogram was taken on September 9, 1988; it was June 13, 1988 that his medical expenses exceeded $2,500.00. On May 24, 1990, Petitioner commenced this action against the Respondents for the damages he incurred. The Defendant immediately moved to dismiss on grounds that the Petitioner's action was barred by the three-year statute of limitations for actions under the Colorado Auto Accident Reparations Act. See Section 13-80-101(1)(j), C.R.S (1987 Replacement Volume 6A).

The trial court on July 27, 1990 entered its Order granting

Defendant's Motion to Dismiss finding that the Petitioner's cause of action commenced on the date of the accident which was July 6, 1986 and that the Petitioner failed to file suit within three years of that date as required by the statute of limitations. It is undisputed that the accident occurred on July 6, 1986, and it is further undisputed that the Petitioner did not meet the $2,500.00 medical expense threshold requirement for bodily injury tort action as provided by the Colorado Automobile Accident Reparations Act at Section 10-4-714,(1)(e), C.R.S (1987 Replacement Volume 4A), until June 13, 1988, nor did he meet any of the other threshold criteria of Section 10-4-714, including death, dismemberment, diagnosis or determination of permanent disability, permanent disfigurement of loss of earnings and loss

of earning capacity extended beyond the 52-week period for no-fault compensation pertaining to lost income.

Petitioner contends that a cause of action for a person injured in an automobile accident accrues when that person knows or should know that his injury meets a statutory threshold for commencing suit.

Generally, a cause of action accrues when a person knows or should know, through the exercise of reasonable diligence, that they have suffered a "legal injury," Section 13-80-108(1), C.R.S (Replacement Volume 6A 1987).

Petitioner commenced his action within two years of meeting the statutory threshold. Therefore, his action was timely filed. The trial court dismissed Petitioner's Complaint in spite of Petitioner's argument that the cause

of action did not accrue until he had met the threshold and his argument that the statute of limitations was tolled until he met the statutorily required threshold. One of the findings of fact by the trial court that was relied upon by the Court of Appeals concerned whether or not Petitioner had knowledge of his injury at the time of the accident. The Court of Appeals held that the records supported a conclusion that the Petitioner knew or reasonably should have known of the fact of his injury on the date of his accident as well. The court of appeals declined to comment on the Petitioner's reference to the State Supreme Court's opinion in

Mastro v. Brodie, 682 P.2d 1162, 1167-68 (Colorado 1984)

wherein "injury" was defined to mean "legal injury" was i.e., containing all of the necessary elements to bring a

claim. There is absolutely nothing contained in the record by which the trial court or the Court of Appeals could conclude that the Petitioner knew or should have known of his injury in the sense of a "legal injury" before he reached the "legal" threshold under Section 10-4-714(2)(e).

X. ARGUMENT

A. THE ISSUE OF WHETHER THE STATUTE OF LIMITATIONS APPLICABLE TO CLAIMS FOR RECOVERY OF BODILY INJURY BROUGHT PURSUANT TO THE COLORADO AUTOMOBILE ACCIDENt REPARATIONS ACT BEGINS RUNNING BEFORE THE "THRESHOLD" REQUIREMENTS OF THAT ACT HAVE BEEN MET OR AFTER THe "THRESHOLD" REQUIREMENTS OF THAT ACT HAVE BEEN MET.

Although the appeals court agreed with the trial court's decision that, because there was no statute of limitations issue in Pistora v. Renden, it should not be expanded to hold that the statute of limitations commences to run on the date the threshold is reached. The Pistoras did have to meet the threshold requirements of Section 10-4-714(1)(e) before they could continue with their action. Regardless if there was a

statute of limitations or not, they still had a threshold requirement.

According to Colorado Personal Injury Practice at S.620 P.44 Volume 7 (1989 Miller), "Presumably an automobile accident injury claim against a person with a 'Complying Policy' would not start the statute of limitations running until a 'threshold' injury was known. The author then cites Pistora. Under the appeals court construction of Section 13-80-108(1), the statute of limitations bars any action for personal injury under the Automobile Accident reparations act that is commenced more than three years after the automobile accident, regardless of when the threshold for filing suit.

When the statute of limitations pertaining to actions for recovery for bodily injury under the Colorado Automobile Accident Reparations Act

begins to run is an issue of significant public importance because it affects all persons injured in automobile accidents. Colorado has a unique statutory scheme which sets forth threshold requirements for bringing suits involving automobile accident cases, and absent meeting one or more of these threshold requirements, an injured party is denied access to the courts and denied justice.

The issue presented is one of pure Statutory construction. The Petitioner submits that under Section 13-80-108(1), C.R.S (Replacement Volume 6A 1987), a cause of action accrues when a plaintiff suffers a legal injury, i.e, when the plaintiff may maintain a cause of action. Applying that principal to an automobile accident case means simply that such action accrues when the plaintiff knows, or should have known, that he

meets one of the PIP threshold requirements contained in Section 10-4-714(1), 4A C.R.S (1987). Until a plaintiff reaches that point, he cannot maintain an action. Pistora v. Renden, 765 P.2d 1098 (Colo. App. 1988). In Mastro v. Brodie, 682 P.2d 1162, the State Supreme Court construed the word "injury" to mean "legal injury." The word appeared in a statutory phrase concerning discovery of injury, just as the relevant statute in this case concerns the same subject. Compare Section 13-80-105(1) 6 C.R.S (1983 Supp.) with Section 13-80-108(1) 6A C.R.S (1987). "Courts have long enunciated the principal that without damage there is no cause of action." See Doyle v. Lynn, 37 Colo. App. 214, 547 P.2d 257, 259 (1975). Recently, the Court of Appeals restated the same principal, holding: "Generally, before a statute of

limitations begins to run, there must be some damage which entitle a plaintiff to maintain a cause of action...the procedure to be utilized in determining when a cause of action accrues is to ascertain when litigation could first have been successfully maintained." Flatiron Paving Company v. Great Southwestern Fire Insurance Company, 14 Brf. Trans. Rptr. 1414, 1415 (Colo. App. October 25, 1990).

Although the Court of Appeals in their decision indicated that the case Dove v. Delgado, 808 P.2d 1270 (Colo. 1991), applied to this issue, that opinion is clearly not correct. Contrary to the facts in this case, the plaintiff in Dove was clearly aware that she had compensable injuries at the time of accident and did not, in fact, "dispute that a cause of action accrued January 27, 1987, the date of the accident." 808

P.2d at 1273. Instead, she contended that the applicable statute of limitations was unreasonably short so as to deny their due process, and that it required her to file her action before she had reached maximum medical improvement.

B. THE COURT OF APPEALS DECISION IN THE PRESENT CASE IS IN DIRECT CONFLICT WITH THE PUBLISHED DECISION OF PISTORA V. RENDEN, 765 P.2D 1099 (COLO. APP. 1988).

Pistora v. Renden, 765 P.2d 1099 (Colo. App. 1988) decided a related issue, i.e., whether or not a person has the right to file a bodily injury claim prior to the attainment of $2,500.00 of actual medical expenses. That decision directly conflicts with the Court of Appeals decision in this case. The court in Pistora held that the plaintiff had no right to file such a claim prior to the

plaintiff's incurring $2,500.00 in medical expenses or otherwise achieving a threshold type injury. In doing so, the Pistora court affirmed the trial court's dismissal of the plaintiff's bodily injury claim, on the grounds that the $2500.00 medical expense threshold had not been met, and characterized the plaintiff's action as having been "premature." The court went on to state that the case could be refiled if the damage threshold was exceeded. 765 P.2d at 1090. Since the State Supreme Court determined in Mastro v. Brodie, supra, that statutes of limitations are tolled until all of the essential elements of a claim are established, and the Court of Appeals found in Pistora v. Renden that all elements of bodily injury claims are not established until the threshold requirement of Section 10-4-714(1) are met,

clearly, the rule of Pistora v. Renden, and the rule of this case are in direct conflict.

By enacting PIP thresholds, the General Assembly created a class of cases where legal injury may or may not occur or be known for some time after the automobile accident. The interests of justice are not served by foreclosing access to the courts to the plaintiff's who do not meet the legal condition precedent within the statute of limitations. See State v. Young, 665 P.2d 108, 110 (Colo. 1983); Pistora v. Renden, 765 P.2d at 1090.

Plaintiffs with bodily injury claims must now decide whether they should immediately file their action and thus violate the rule of Pistora v. Renden, which prohibits them from doing so until they have incurred $2,500.00 in

medical expenses, or, on the other hand, comply with the mandate of Pistora v. Renden, but risk the severe prejudice that is likely to occur by allowing the statute of limitations to run pending realization of a threshold injury.

Petitioner contends that the $2500.00 medical expense threshold requirement, for many reasons, should be recognized as an "objective" type threshold, which requires a simple determination of whether $2,500.00 in medical expenses have been incurred, and not a "verbal" type threshold, requiring a complicated and retrospective determination of exactly when a plaintiff knew or should have known that he or she had a prospective "need" for medical services in excess of that amount. The court in Pistora v. Renden, seems to agree with such a rule. Although the plaintiff

argued in Pistora v. Renden that he had the right to maintain his action for bodily injury because his injuries were of "an on-going nature" and he was thus likely to "exceed the $2,500.00 threshold in the foreseeable future," the court of appeals disagreed. Instead, the court ruled that the actual occurrence of medical expenses was controlling and not a prospective need for such, stating that "an action such as this cannot be maintained unless medical expenses exceed a threshold requirement of $2,500.00," 765 P.2d at 1089. The Court of Appeals in the present case declined to adopt the "objective" type threshold, and in its opinion, adopted a position that seems more akin to a "verbal" type threshold. The Court of Appeals adopted a position that the $2,500.00 threshold had no relationship to the knowledge of his

"injury." Obviously, the legislature felt that the $2,500.00 threshold did have a relationship to the injury that a person receives in an automobile accident. This is evidenced by the fact that they created that level of medical expenses as a threshold level for proceeding with third-party claims. It can be assumed that an injured party, through attainment of medical care, begins to recognize the seriousness of his injury and recognize his entitlement to compensation beyond that compensation provided under the first-party benefits portion of the Colorado Automobile Reparations Act, as that care and the cost of that care escalates.

Based upon foregoing arguments, the Petitioner requests this Honorable Court to grant a Writ of

Certiorari to let nothing stand in the way of justice.

Respectfully submitted this 10th day of July, 1992.

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XI. APPENDIX

A. Opinions.

State Appeals Court Opinion by Judge Silverstein, Pierce and Marquez, J. J., concur.

B. Orders.

State Supreme Court Case No. 91SC716 Petition denied on April 13, 1992. Certiorari to Appeals Court.

State Appeals Court Petition denied October 24, 1991, Case No. 90CA1563.

District Court, City and County of Denver, Case No. 90CV5699 dismissed with prejudice.

C. Findings of Fact.

There is absolutely nothing contained in the record by which the trial court or the Court of Appeals could conclude that the Petitioner knew or should have know of his injury in the

sense of a "legal injury" before he reached the "legal" threshold under Section 10-4-714(1)(e).

CONCLUSIONS OF LAW

A. Open brief

B. District Court City and County of Denver

C. State Appeals Court by Judge Silverstein, Pierce and Marquez, J. J., concur

D. State Supreme Court

E. Section 10-4-714(1)(e), C.R.S. (1987 Replacement Volume 4A)

F. Section 13-80-108(1)(j). C.R.S. (Replacement Volume 6A)

G. Section 13-80-108(1), C.R.S. (Replacement Volume 6A 1987)

H. 13-80-105(1) 6 C.R.S. (1983 Supp.)

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O. Pistora v. Renden, 756 P.2d 1099 (Colo. App. 1988).

P. Doyle v. Linn, 37 Colo. App. 214, 547 P.2d 257, 259 (1975)

Copies attached in Appendix